IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 7259 of 2004

Between:

M/s. Techtran Polylenses Ltd., # 400, Sagar Co-op. Housing Society,
Road No.2, Banjara Hills, Hyderabad-34, rep., by its Executive Director
K.Krishnadev Rao

..... PETITIONER

AND

1 Transmission Corporation of A.P. Ltd., Vidyutsoudha, Khairatabad,
Hyderabad, rep., by its Chairman and Managing Director.
2 The Central Power Distribution Company of A.P. Ltd., Singareni Bhavan,
Redhills, Hyderabad, rep., by its Chairman and Managing Director.
3 A.P. Gas Power Corporation Ltd., 201, 2nd Floor, My Home Sarovar Plaza,
Secretariat Road, Hyderabad, A.P., rep., by its Managing Director.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction declaring the action of the respondents 1 and 2 in not giving effect to the share transfer and allocation of power made by the 3rd respondent under the share certificate dt.13-03-04 for the billing month of March, 2004 as illegal and arbitrary and consequently direct respondents 1 and 2 to revise the bill for the month of March 2004 by excluding the cost of 310041 units of power allocated by the 3rd respondent in favour of the petitioner.

Counsel for the Petitioner: MR.C.V.NAGARJUNA REDDY

Counsel for the Respondents : SMT.M.VINOBHA DEVI, S.C. for A.P.Transco.

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 7259 of 2004

O R D E R :

The petitioner herein, an industrial unit manufacturing plastic ophthalmic Lenses, filed this Writ Petition, *inter alia,* seeking for a Writ of Mandamus declaring action of the respondents 1 and 2 in not giving effect to the share transfer and allocation of power made by the third respondent under the share certificate dated 13.03.2004 for the billing month of March, 2004, as arbitrary and illegal, and further to direct the respondents 1 and 2 to revise the bill for the month of March, 2004 by excluding cost of 31,004 units of power allocated by the third respondent in favour of the petitioner.

The facts, in brief, are that with a view to have assured power supply, the petitioner entered into a Memorandum of Understanding (MoU) with M/s. V.B.C. Ferro Alloys Limited, which is a shareholder of the third respondent-corporation for transfer of shares by its shareholders subject to the condition that the transferee shall be H.T. consumer of A.P. Transco i.e. first respondent herein. As per the said agreement dated 17.02.2004, 1,34,000 shares equivalent to 0.50 MW of stage-II power of the third respondent was acquired. Accordingly, the third respondent had written a letter dated 21/23.02.2004 to the first respondent about the proposed transfer of aforesaid shares to the petitioner. Therefore, a share certificate was issued on 13.03.2004 by the third respondent in favour of the petitioner, which was also intimated to the respondents 1 and 2 as per the letter of the third respondent-corporation on the same day. Therefore, the petitioner became entitled to allocation of power in proportionate to its share value in the billing month of March, 2004. Further, it is pointed out that

the said transfer of shares is perfectly in compliance to the clause 4.5 of MoU-II and also circular issued on 16.08.2002. As per the clauses contemplated under Article 2 of the MoU-II especially in clause 2.6, 15 days notice has to be given in advance for the purpose of allocation of unutilised power by other participating industries and which has to be allocated among the other participating industries. Therefore, since M/s. V.B.C. Ferro Alloys Limited was not utilising the power to the full extent of its share for May, 2002, the same was surrendered and being allocated to the other participating industries. Therefore, the petitioner requested the third respondent to allocate from out of the unutilised surplus power of March,2004 in terms of resolution dated 21.08.2003 of the third respondent company. Accepting the said offer and since there was unallocated power left with the third respondent for February,2004, the third respondent allocated 3,10,041 KWH units to the petitioner for March, 2004. Thereupon, a bill dated 26.03.2004 was raised for a sum of Rs.2,41,212/- towards cost of the power allocated. Accordingly, the said amount was paid under a receipt dated 03.04.2004. However, surprisingly, the third respondent issued a revised bill for 2,78,032 units at the rates of respondents 1 and 2, which is far higher than the tariff of the third respondent, demanding a sum of Rs.11,37,102/-. It is submitted that the petitioner is liable to pay only minimum charges towards the energy which comes to only Rs.2,30,952/-. Therefore, the petitioner addressed a letter dated 12.04.2004 pointing out that such demand is not correct and sought revision of the bill excluding the power bill. However, no reply has been given. Since there threat of disconnection, the petitioner filed the present Writ Petition. The main contention urged on behalf of the petitioner is having regard to the clauses contained in the aforesaid MoU, the petitioner is entitled for such allocation which has been rightly made, and therefore, the impugned demand is wholly unsustainable. Hence, the Writ Petition.

Contesting the petitioner’s claim, the case of respondents through counter affidavit filed by respondents 1 and 2, is that there is no

dispute in regard to the entitlement of the participating industries as per the clauses contained in the MoU dated 19.04.1997. However, as per the clause 2.2, the transfer has to be made month to month basis and not as a part of billing month. Further, prior approval should be obtained from the third respondent before the actual availment by transferee concern and in the absence of the same, the first respondent is entitled to sell the shares energy and power to its customers which may also include members of third respondent at such rates as approved by APERC. Admittedly, the petitioner, having obtained share certificate on 13.03.2004, can not claim for revision of bill for the month of March, 2004. Even as per the decision dated 21.08.2003 of members of the third respondent, there is no possibility to allocate the proportionate shares of stage-II of power to effect prorate allocation. Therefore, it was contended that the eligible quota of power to the extent of equity share shall be allocated to the transferor from the future billing month depending on the eligibility. Since the billing month has already commenced, transfer in the middle would not enable the petitioner to entitle for any such claim.

Heard Sri C.V. Nagarjuna Reddy, learned counsel appearing on behalf of the petitioner and Smt. M.Vinobha Devi, learned standing counsel appearing on behalf of the respondents.

Considering the submissions made and on perusal of the material, the only question which crops up for consideration in this Writ Petition is as to whether the transferee from participating industry in the midst of month is entitled to allocation of power as contemplated under the agreement ?

There is no dispute in regard to the chequered events leading to entering into the MoU for the purpose of assured supply to the participating industries with the respondents-corporation. There is also no dispute in this case that the petitioner herein has purchased

the equity share from M/s. V.B.C. Ferro Alloys Limited and that the said participating industry has stock of unutilised power and as per the terms of the agreement, the said participating industry is entitled to the allocation of such surplus power on pro-rata along with other participating industries. However, the fact remains that in this case, the petitioner had purchased the said share of M/s. V.B.C. Ferro Alloys Limited and in terms of which share certificate was issued only on 13.03.2004 which falls in the middle of the month and there is also no dispute that the said intimation was given to respondents 1 and 2 on the same day. The disputed bill in this case pertains to the month of March, 2004. Clause 2.6 of the aforesaid MoU reads as follows:

> **" Non Utilisation of Energy by any of the Participating Industries to full extent:**
>
> When a Participating Industry, for any reason is unable to utilise its full share of energy from APGPCL, it shall give an advance notice of atleast 15 days before the billing month to APGPCL. APGPCL shall then reallocate the surrendered energy of the Participating Industry on pro-rata basis, among those of the rest of the Participants who require additional power. However, when the advance notice is not received by APGPCL within the stipulated period mentioned above, the unutilised power shall be fully allocated to A.P. Transco."

On a reading thereof, it is clear that necessarily an advance notice atleast 15 days before the billing month has to be given to the third respondent, who then reallocate the surrendered energy to the participating industry on a pro-rata basis among those of other participants requiring additional power. It also contemplates that in the absence of any such notice, the unutilised power shall be fully allocated to A.P. Transco, which again is reiterated in the subsequent clause in 2.8 thereof. In this case, admittedly, share certificate has been issued in favour of the petitioner only on 13.03.2004, which is falling in the middle of the month. It is not the case of the petitioner that either the transferor viz. M/s. V.B.C. Ferro Alloys Limited or the petitioner itself, has given any such notice offering any advance

intimation as contemplated therein. Therefore, on a reading of the aforesaid clauses 2.6 and 2.8, issuance of prior advance notice atleast 15 days before the billing month, is mandatory and in the absence of which, the entire allocation falls to A.P. Transco, who has got exclusive discretion to make use of such unutilised power and therefore, neither the participating industry nor the purchaser thereof, is entitled to make any claim. In the circumstances, it is to be held that the petitioner having not given any such demand and notice prior to the billing month, is not entitled to use such unutilised power.

It is also to be noticed that this court has already taken a view in the order dated 06.12.2004 in Writ Petition Nos. 9154 of 2004 and batch, that the respondents are entitled to charge the usual rates and not the rates as agreed to in terms of the aforesaid agreement as per clause 17(a) of the MoU therein. Therefore, I do not see any illegality in the revised bill issued by the respondent. In the circumstances, there are no merits in the Writ Petition.

The Writ Petition is, accordingly, dismissed. No costs.

(B.Prakash Rao, J.)

20.12.2004

DRK

Copy to:

1 Transmission Corporation of A.P.,Ltd., Vidyutsoudha, Khairatabad, Hyderabad, rep., by its Chairman and Managing Director.

2 The Central Power Distribution Company of A.P.Ltd., Singareni Bhavan, Redhills, Hyderabad, rep., by its Chairman and Managing Director.

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4 Two CD copies.